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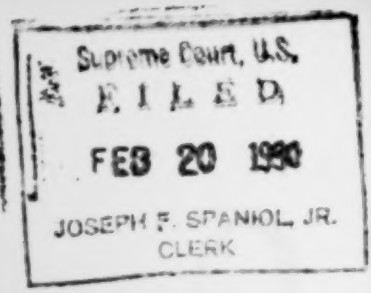

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

LOUISE W. GOODRICH,

Petitioner,

v,

COUNTY OF LOS ANGELES,

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION SEVEN

APPENDIX, DECISION OF COURT OF APPEAL
(Volume Two, of three volumes)

Louise W. Goodrich
16187 East Deeplake Avenue
Palmdale, California 93550
(805) 264-4702

Louise W. Goodrich,
in propria persona

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60 pp

APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION SEVEN

LOUISE W. GOODRICH, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	No. B034661 (Super. Ct. No. C566070)

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COURT OF APPEAL SECOND DIST.
F I L E D

AUG 11 1989

ROBERT N. WILSON Clerk

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION SEVEN

LOUISE W. GOODRICH, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	No. B034661 (Super. Ct. No. C566070)

APPEAL from an order of the Superior Court of Los Angeles County. Howard J. Schwab and Robert L. Roberson, Judges. Affirmed.

Fizzolio, Fizzolio & McLeod and James M. Fizzolio, for Plaintiff and Appellant.

De Witt W. Clinton, County Counsel, for Defendant and Respondent.

INTRODUCTION

Plaintiff, Louise W. Goodrich, appeals from an order dismissing the County of Los

Angeles from her action after the County's demurrers to a series of amended complaints were sustained without leave to amend. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 18, 1985, appellant, Louise W. Goodrich, hereafter "Goodrich", filed her complaint against respondent, Los Angeles County, hereafter "County", and against other individual and corporate defendants. The action pertained to Goodrich's purchase in 1983 of a manufactured-to-order home. The home was installed on a permanent foundation on Goodrich's residential lot, which was not located in a mobilehome park.

Goodrich alleged, in general, that the escrow which was opened to facilitate her purchase of the subject manufactured home was closed without a proper inspection of the home by the Los Angeles County Building and Safety Department thereby resulting in

damages to her.

There is no dispute that the manufacturing of the home was subject to the Federal Manufactured Home Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401. et seq.) and all state and county statutes and ordinances enacted in accordance with the provisions of the federal Act.

The remaining defendants, who were sued based on theories of breach of express and implied warranties, fraud and conspiracy, included the manufacturer, distributor, contractor, escrow company and various agents thereof, are not parties to this appeal.

Goodrich amended her complaint a number of times after the demurrers were sustained. Goodrich's second amended complaint against the County contained a seventh cause of action for breach of mandatory and non-delegable duties. The County's demurr-

er to this cause of action was sustained without leave to amend.

Goodrich's fifth amended complaint also contained a seventh cause of action against the County for deprivation of constitutional rights. An eighth cause of action in the fifth amended complaint contained allegations against the County for conspiracy to deprive her of constitutional rights. The County's demurrers to these causes of action were likewise sustained without leave to amend and the County was subsequently dismissed from the action.

A summary of Goodrich's efforts to plead legally sufficient causes of action against the County is as follows:

Theory of County's Liability As Contained In Goodrich's Initial Complaint

In the initial complaint, Goodrich, in summary, pled that the real source of her damage resulted from the closing of an escrow which she had opened to facilitate the purchase of her made-to-order manufactured

home. Allegedly the escrow closed following an inadequate inspection and an improper approval and certification for occupancy by one Severino Gaba, an inspector for the County, employed by the County Engineer - Facilities, Building and Safety Division, Lancaster Office.

Distillation and Interpretation Of* Allegations Against The County As Contained In Goodrich's Second Amended Complaint.

Goodrich alleges in the seventh cause of action of her second amended complaint as follows:

1. "It was encumbent on Defendant COUNTY under Health & Safety Code §§ 18551, 18613, 18614, to monitor the installer's work,

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* Goodrich's method of pleading by incorporating allegations from previously pled causes of action into her seventh cause of action has led to difficulty with respect to analysis of the seventh cause of action of the second amended complaint. The distillation and interpretation of the seventh cause of action has by necessity caused this court to set forth both verbatim quotations and reasonable inferences from the language of Goodrich's pleadings.

---

perform certain tests, and make a final inspection . . . and in the event defects or damages, or non-compliances were found to be present in the structure, to send a written report of same to the HCD . . . ."

2. Under the terms of the escrow, Goodrich's purchase price was to be released from escrow "upon the completion of Final Inspection Approval and issuance of a valid Certificate of Occupancy, and when both parties had satisfactorily performed the terms of the contract."

3. The County did not issue form HCD 413, which was developed by the Department of Housing and Community Development (hereafter "HCD") to be used by enforcement agencies as the only certificate of occupancy that the manufactured home had been properly manufactured and installed. The form was to be recorded.

4. Through Gaba, respondent issued an improper Final Inspection Approval and an

invalid Certificate of Occupancy.

5. The inspection by Gaba was inadequate and improper.

6. The County did not make the inspection required by §§ 18613 and 18614.

7. "By reason of the foregoing acts and omissions to act, Defendant COUNTY breached its mandatoy and non-delegable duties of inspections, testing, monitoring and enforcing compliance with the laws by Defendants BRATTON and PADILLA. Said Defendant COUNTY violated Health & Safety Code § 18015 and 18551 . . . ."

Summary Of The Allegations Against The County In Goodrich's Fifth Amended Complaint

In the seventh and eighth causes of action against the County in her fifth amended complaint, Goodrich attempted to state the laws which the County allegedly violated thereby depriving Goodrich of a property interest (in the enforcement of said laws) protected by the Constitution.

The seventh cause of action alleged in detail how the County failed to perform certain functions as required by the National Manufactured Home Construction and Safety Standards Act of 1974 and the various federal, state and county regulations promulgated pursuant thereto, resulting in a deprivation of Goodrich's constitutional rights.

The eighth cause of action contains allegations of a conspiracy to deprive Goodrich of the enforcement of the laws alleged in the seventh cause of action.

Following the dismissal of the County from Goodrich's action, Goodrich filed a timely notice of appeal.

ISSUES ON APPEAL

1. By enacting the Federal Manufactured Home Construction and Safety Standards Act of 1974, did Congress intend to preempt state and local building and safety laws pertaining to routine safety inspections of installed manufactured homes by local building and safety inspectors?

2. Is the County liable for breach of mandatory duties for the failure of its

building and safety inspector to properly inspect, and certify for occupancy, Goodrich's installed manufactured home?

3. Was Goodrich deprived of any constitutional rights by the failure of the County's agent to properly inspect the installation and to properly approve for occupancy Goodrich's manufactured home?

Goodrich contends that she sufficiently pled causes of action against the County for breach of mandatory duty, deprivation of constitutional rights and conspiracy and that the trial court erroneously sustained the County demurrers without leave to amend and that the subsequent dismissal of the County from the action was likewise erroneous. We disagree.

DISCUSSION

It is well settled that a general demurrer admits the truth of all material factual allegations in the complaint and that the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof, does not concern the reviewing court. (Alcorn v.

Anbro Engineering, Inc. (1970) 2 Cal.3d 493, 496.) The plaintiff need only plead facts showing that she may be entitled to some relief. (Ibid.) If Goodrich in the instant case pled facts entitling her to relief, then the trial court erred in sustaining the County's demurrers and in dismissing the County from the action.

1.

The Federal Manufactured Home Construction And Safety Standards Act Does Not Preempt Local Building And Safety Ordinances And Routine Inspections Thereunder

The paramount issue which permeates Goodrich's attempts to state a viable cause of action against the County stems from her assertion that the County failed in this instance to follow the provisions of the Federal Manufactured Home Construction and Safety Standards Act of 1974 (hereafter "the Federal Act"). Goodrich contends that the Federal Act and all state and county statutory enactments and regulations enacted in accordance with the Federal Act were

pertinent and that the County inspector who inspected the installation and approved it for occupancy was obligated on behalf of the County to follow the dictates of those laws and regulations. Goodrich further asserts that the County agent and inspector having failed to so comply, her escrow to facilitate purchase of her manufactured home should never have been closed and that she has been damaged thereby.

Goodrich's contentions that the Federal Act pre-empts local law is accurate in those areas where the local law is inconsistent with the Federal Act. We need not address this contention, however, since we hold that the United States Congress did not intend the Fedral Act to apply to the type of factual situation extant in this case as hereafter discussed.

Initially, a careful reading of the relevant sections of the Federal Act manifestly reveals that Congress expressed

no intention to interject itself by way of the enactment, into local land use or local building and safety regulations of a routine nature. The Federal Act patently refers to pre-emption regarding "construction or safety" of manufactured homes. (42 U.S.C.§ 5403(d).)

In this instance, the action of the County inspector pertained clearly to an inspection of the installed home at the site on behalf of the County's division of building and safety and subsequent approval for occupancy. The record does not reveal the slightest suggestion that the County inspector was involved with the manufacturer of a home as contemplated by the Federal Act. The home had already been manufactured and installed at the site before the County inspector was involved. Reliance on the Federal Act by Goodrdich in this instance is clearly misplaced.

The relationship between the Federal

Act and local land use is discussed by the Nichigan Supreme Court in Gackler Land Co., Inc. v. Yankee Springs Tp. (Mich. 1986) 398 N.W.2d 393. In view of the absence of California and federal case authority on the issue, we find the comments by the Michigan Supreme Court in Gackler Land Company to be persuasive in this instance. In discussing the question of the applicability of the Federal Act to local zoning ordinances in the State of Michigan, the Michigan Supreme Court held as follows:

> "III. Is the Zoning Ordinance Invalid Because It is Preempted by Federal and State Law and Was Not Enacted Pursuant to the Michigan Mobile Home Commission Act?
>
> "The plaintiff also contends that certain portions of the zoning ordinance are preempted by federal and state law, specifically, the National Manufactured Home Construction and Safety Standards Act 42 U.S.C. § 5401 et seq.; the State Construction Code Act, M.C.L. §§ 125.1519, 125.1520; M.S.A. §§ 5.2949(19), 5.2949(20); and the Mobilehome Commission Act, M.C.L. § 125.1101 et seq.; M.S.A. § 19.855(1) et seq. Both the trial court and the Court of Appeals disagreed with plaintiff, finding that

the various acts provide construction and safety standards, not standards concerning proper land use, which is the thrust of zoning laws. We believe the lower courts have properly interpreted these statutes.

"The purpose of the federal act is set forth in 42 U.S.C. § 5401: [Par] `The Congress declares that the purposes of this chapter are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes. Therefore, the Congress determines that it is necessary to establish Federal construction and safety standards for manufactured homes and to authorize manufactured home safety research and development. (Emphasis added.)'

"Further, § 5403(d) provides that no state or political subdivision thereof may establish a standard regarding construction or safety of any manufactured home covered under the act. The requirements of the zoning ordinance in the case at bar are not standards regulating the construction or safety of mobile homes. Rather, they have for their purpose the regulation of where mobilehomes may be placed and under what conditions. These requirements are for the purpose of regulating land use and therefore do not conflict with standards promulgated under the federal Manufactured Home Construction and Safety Standards Act. Accord Brookside Village v. Comeau, 633 S.W. 2d 790 (Tex. 1982), cert. den. 459

U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 932 (1982)." (Id., at pp. 400-401.)

Secondly, Goodrich has alleged a theory of general damages against the County which are based upon a relationship between the alleged improper closing of her escrow and an alleged faulty inspection and issuance of a certificate of approval for occupancy by the County building and safety inspector. We search in vain to find a provision for such damages in the Federal Act. Even if this court were to be persuaded that the Federal Act was applicable to this escrow, the only provision in the Federal Act pertaining to damages is found in §§ 5420 as follows:

> "Any person, other than an officer or employee of the United States, or a person exercizing inspection functions under a State plan pursuant to § 5422 of this title, who knowingly and wilfully fails to report a violation of any construction or safety standard established under § 5403 of this title may be fined up to $1,000 or imprisoned for up to one year, or both."

The damages referred to in section 5420

are "penalties" which include a $1,000 fine or imprisonment for up to one year, or both, for violation of the act. This provision is "penal" in nature and has no relevance to a civil lawsuit for damages such as the instant one filed by Goodrich.

2.

The County Is Not Liable To Goodrich For Any Purported Breach Of Mandatory Duty

Goodrich next contends that the County is liable for its failure to discharge a mandatory duty pursuant to Government Code § 815.6. Government Code § 815.6 provides that: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercized reasonable diligence to discharge the duty."

A plaintiff must meet the requirements

of a three-prong test to rcover under Government Code § 815.6.First, the plaintiff must establish that the "enactment" imposes a mandatory, and not discretionary, duty. (Gray v. San Francisco Gun Exchange, Inc. (1989) 207 Cal. App.3d 151, 155.) Second, a plaintiff must prove that the enactment is designed to guard against the type of injury suffered by the plaintiff. (Ibid.) Third, the plaintiff must demonstrate that the breach of the mandatory duty proximately caused the injuries. (Ibid.)

"`[A] litigant seeking to plead the breach of a mandatory duty must specifically allege the applicable statute or regulation.'" (Sullivan v. City of Sacramento (1987) 190 Cal.App.3d 1070, 1080.) "Unless the applicable enactment is alleged in specific terms, a court cannot determine whether the enactment relied upon was intended to impose an obligatory duty to take official action or whether it was merely

advisory in character." (Ibid.)

Our first difficulty in evaluating Goodrich's contention is in determining what enactments Goodrich is contending that the County breached. In the seventh cause of action of the second amended complaint, Goodrich alleges that the County breached its duties under Health and Safety Code sections 18551, 18613 and the regulations enacted thereunder. The only regulations mentioned in the second amended complaint are HCD Information Bulletins MH-79-20 and MH-79-21 and a county memorandum dated October 27, 1981. In her reply brief, Goodrich states that the sale was governed by Health and Safety Code sections 18550, 18551, et seq.

For the purposes of this appeal, we assume that Goodrich is contending that the County breached mandatory duties under Health and Safety Code sections 18015, 18551, 18613, 18614. Although other enact-

ments are alluded to, these statutes are the only ones identified in the seventh cause of action of the second amended complaint as having been breached. In the second amended complaint, Goodrich inferentially alleges that the County breached a duty under HCD Information Bulletins to use HCD Form 413 by failing to complete and have it recorded.

At this point we direct our attention to the HCD Information Bulletins. Is this Court required to give "force of law" status to the information bulletins alluded to in Goodrich's pleadings? We think not. Pursuant to Government Code section 810.6, an "`enactment' means a constitutional provision, statute, charter provision, ordinance or regulation." (Emphasis added.) In order to be a regulation having the force of law (i.e., one capable of imposing a mandatory duty per Govt. Code § 815.6), a regulation of a state agency, such as HCD,

must be adopted pursuant to the Administrative Procedure Act, Government Code, section 11340 et seq. (Govt. Code § 811.6.)

Pursuant to Evidence Code section 452, subdivision (b) and section 454, subdivision (a)(1), 2* we judicially note that, according to HCD, information bulletins are not adopted pursuant to the Administrative Procedure Act and are not enactment intended to have the force of law rather the bulletins are explanatory mamoranda to the industry.

Hence, the information bulletins iden-

2* Evidence Code section 452, subdivision (b) provides that judicial notice may be taken of "[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States."

Evidence Code section 454, subdivision (a)(1) provides that information which may be used in taking judicial notice includes "[a]ny source of pertinent information, including the advice of persons learned in the subject matter, may be consulted or used, whether or not furnished by the party ." (Emphasis added.)

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tified in the complaint are not regulations which can impose a mandatory duty on the county. Since Goodrich is not specific and only identifies the county memorandum alluded to in her pleadings by date, we infer that the county memorandum is likewise not a regulation having the force of law status so as to impose a mandatory duty on the county.

We next turn our attention to the statutes which Goodrich contends imposes mandatory duties on the County. Consistent with the definition of "enactment" as used in Government Code section 815.6, "mandatory duty liability ordinarily is based upon noncompliance with specifically described duty imposed by a constitutional provision, a state or federal statute, or a regulation that has the force of law." (Emphasis added.) (Van Alstyne, Cal. Government Tort Liability Practice, (Cont. Ed.Bar 1980) § 2.42, p. 95.)

Where Courts have concluded that a governmental mandatory duty exists as a condition precedent to issuing a permit, the particular enactment usually contained language such as "each and every county shall require." (Young v. Inglewood (1979) 92 Cal.App.3d 437 [Duty imposed by Bus. & Prof. Code., § 7031.5 to secure evidence that contractor applying for building permit is duly licensed.]; (Morris v. County of Marin (1977) 18 Cal.3d 901 [Duty imposed by Lab. Code., § 3800 that county obtain a certificate of workers' compensation coverage from all applicants for building permits.].)

Other mandatory duties exist when the enactment dictates a specific directive. (Johnson v. Mead (1987) 191 Cal.App.3d 156 [Duty imposed by Veh. Code section 12805 not to issue or renew a driver's license if the department had determined beforehand that the person was unable to safely oper-

ate a motor vehicle.]; Sullivan v. County of Los Angeles (1974) 12 Cal.3d 710 [Duty imposed by Pen. Code., § 1384 to release prisoner upon dismissal of all charges.] Kane v. County of San Diego (1969) 2 Cal. App.3d 550 [Duty imposed by Food & Agr. Code., §§ 31107-31108 to give owner notice prior to destruction of impounded dogs.].)

In her complaint, and likewise in her briefs on appeal, Goodrich refers to mandatory duties without linking the elaborated duties to the statute which Goodrich contends imposes the duty. Since we were left with the onerous task of deciphering what statutes impose the duty which Goodrich contends that the County breached, we conclude that Goodrich failed to sufficiently comply with Government Code section 815.6. A plaintiff must plead not only the specific enactment which imposes a mandatory duty, but also, where several enactments are pled, identify for each enactment

the specific duties imposed.

In spite of Goodrich's manifest failure to comply with Government Code section 815.6, we nevertheless reluctantly turn to an analysis of the allegations of the second amended complaint, as previously set forth in the"factual and procedural background" of this opinion, in applying the aforementioned principles to the seventh cause of action for breach of mandatory duty.

Former Health and Safety Code section 3* 18015 (added by Stats. 1981, c. 975, § 3, p. 3728) imposed no mandatory duty on any entity, but simply states that: "The department [HCD, § 18206] may promulgate regulations . . . ."
(Emphasis added.)

Former Health and safety Code section 18551 (amended by stats. 1980, ch. 1149, §

3* We cite to former sections as these sections have been amended since the events in question in this matter.

40, p. 3774) provided that the HCD shall establish regulations for mobilehome foundation systems. No reference is made to local enforcement agencies other than in the context of the requirements for obtaining a building permit by the mobilehome owner or a licensed contractor and in the requirement that the agency record a document naming the owner of the real property on which the mobilehome has been installed.

Reliance on section 18551 by Goodrich in this instance is misplaced. We find nothing in the statute which could be interpreted as creating mandatory duties to Goodrich by the County under the facts of this case with subsequent liability by the County for breach thereof. Section 18551 does not apply to a routine building and safety inspection of an "installed" mobilehome by a County inspector prior to issuance of a certificate of occupancy.

Former Health and Safety Code sections

18613 (amended by Stats. 1982, ch. 928, § 3, p. 3328) and 18614 (amended by stats. 1979, ch. 1152, § 131, p. 4283) do mention the local enforcement agency. Under former section 18613, the installation contractor had a duty to obtain a permit and complete the installation in accordance with building standards. Former section 18613 provided that: "If inspection of the mobilehome installation by the enforcement agency determines that the mobilehome cannot be approved for occupancy due to defective material . . . [t]he enforcement agency shall immediately notify the department whenever any mobilehome cannot be approved for occupancy due to defects of the mobilehome." Former section 18614 likewise provided that the enforcement agency shall notify the registrar of contractors if the installation of a mobilehome by a contractor failed the inspection.

We fail to discern any mandatory duties

on the part of the County to Goodrich from the statutes pled by Goodrich. The statutes to which Goodrich makes reference do indeed impose duties on designated persons, but the duties inure to the benefit of the "department" which is required to be informed of deficiencies in mobilehomes through a designated reporting process. We are unable to interpret former section 18614 as creating a duty to persons situated as is Goodrich in this case.

County contends, arguendo, that even though it might be liable for damages caused by its failure to carry out a mandatory duty (which is not apparent from the statutes pled by Goodrich), it is immune from liability for inadequate or faulty inspections under Government Code section 818.6. 4* and for approving and issuing a

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4* Govermnent Code section 818.6 provides that: "A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inade-

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certificate of occupancy under Government Code section 818.4.* We agree and observe that since governmental immunity is a question of jurisdiction, lack thereof can preclude a cause of action. (Buford v. State of California (1980) 104 Cal.App.3d 811, 826.)

Furthermore, "[t]he purpose of Government Code section 818.6 is to protect public entities from liability not only for failures to detect technical safety code violations, but for any negligence directly connected to the inspection process itself.

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quate or negligent inspection, of any property . . . for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety."

5* Government Code section 818.4 provides that: "A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked."

In order for the immunity to apply, the negligence in question must have been part and parcel of the inspection or have had a direct or proximate effect on it, either impairing its value, frustrating its goals or purposes, affecting the results or findings made, or in some other way resulting in damage to the investigation itself. Conversely, the immunity does not protect public entities from liability for negligent acts or omissions that happen to occur while the inspection is taking place, but which do not affect the results or goals of the inspection itself." (Emphasis added.) Cochran v. Herzog Engraving Co. (1984) 155 Cal.App.3d 405, 412.)

Since the purported act carried out by the County's building and safety inspector, Severino Gaba, was the inspection process and since the necessity to report to HCD or the registrar of contractors and the necessity to record a document naming the owner

of the real property on which the mobile-home has been installed are part and parcel of the inspection process, under the reasoning in Cochran, the County is immune from any liability for failing to make a proper inspection or issuing an invalid certificate of occupancy. It has been held that: "inspection of property for compliance with codes and regulations is the means by which the public entity carries out its mandatory duty of enforcing compliance with codes and other building standards." (Harshbarger v. City of Colton (1988) 197 Cal.App.3d 1335, 1346.)

3.

Goodrich Was Not Deprived Of Any Constitutional Rights (by Conspiracy or otherwise) Since No Fundamental Constitutional Right Was Involved Or Affected By The Actions Of The County

Goodrich contends that she was deprived of her constitutional rights under due process and equal protection clauses of the Fifth and Fourteenth Amendments to the

United States Constitution and under the Civil Rights Act (42 U.S.C. § 1983, hereafter "Section 1983"). Goodrich is incorrect.

Whether analysed as a due process, equal protection or Section 1983 claim, there must be a constitutional right which has been affected. Goodrich claims that she was deprived of the right to acquire, enjoy, own and dispose of property. However, Goodrich is not attacking any of the statutes or regulations themselves as being unconstitutional, rather the essence of her claim is that administrative noncompliance with the manufactured housing laws (the federal Manufactured Home Construction and Safety Standards Act of 1974 and the various federal, state and county regulations promulgated pursuant thereto) violated her constitutional rights.

"Due process of law is a summarized constitutional guarantee of respect for

those personal immunities which, as Mr. Justice Cardoza twice wrote for the Court, are `so rooted in the traditions and conscience of our people as to be ranked as fundamental,' (citation) or are `implicit in the concept of ordered liberty.' [Citation]" (Rochin v. California (1951) 342 U.S. 165, 169.) Consumer protection rights are not so rooted in tradition as to be considered fundamental rights.

In order for procedural due process rights to apply, a state or federal law must create a "'legitimate claim of entitlement'" within the protection of the due process clause. (Memphis Light, Gas & Water Div. v. Craft (1978) 436 U.S. 1, 11-12.) The issue of when such an interest rises to the level of a constitutionally protected property interest or entitlement is a question of federal, not state, law. (Logan v. Zimmerman Brush Co. (1982) 455 U.S. 422, 432.)

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. (Paragraph.) Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law --rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus, the welfare recipients in (citation) had a claim of entitlement to welfare payments that was grounded in the statute defining elegibility for them." (Board of Regents v. Roth (1972) 408 U.S. 564, 577.)

Courts have determined that a claim of entitlement existed to a driver's license, a horse trainer's license, utility service,

disability benefits, high school education, government employment, and welfare benefits (See cases collected in Logan v. Zimmerman Brush Co., supra, 455 U.S. 422, 431.) In Logan, the Court determined that the plaintiff's FEPA (Fair Employment Practices Act) claim was a protected property interest. (Ibid.)

Goodrich cites no cases where any consumer protection statute has been held to confer a legitimate claim of entitlement or to constitute a protected property interest. In reading the complaint, we do not discern any benefit which is analogous to those benefits which have been determined to be entitled to constitutional protection Basically, to accept Goodrich's argument, we would have to recognize a claim of entitlement to the enforcement of all the manufactured housing laws. We decline to accept that invitation. We conclude that the manufactured housing laws do not con-

tain a cognizable benefit and therefore do not confer a property interest. Thus, Goodrich's due process rights were not violated.

To successfully assert a violation of the equal protection clause, the prerequisite of a suspect class or a fundamental right must first exist. (Purdy & Fitzpatrick v. State of California (1969) 71 Cal. 2d 566, 578-579.) Consumers are not a suspect class and, as discussed in this opinion, no fundamental right was violated Accordingly, there was no violation of Goodrich's equal protection rights.

"[T]he touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution." (Monell v. New York City Dept. of Social Services (1978) 436 U.S.658, 690.) There was no deprivation of a constitutional right in the instant case so we

need not address the issue of whether or not the complaint contained facts establishing such an alleged policy by the responding entity.

Thus, we conclude that Goodrich did not successfully plead a cause of action for deprivation of constitutional rights.

Finally, "[a] civil conspiracy, no matter how manifest and egregious, does not give rise to a cause of action unless an underlying civil wrong has been committed resulting in damage." (Manor Investment Co. v. F. W. Woolworth Co. (1984) 159 Cal.App.3d 586, 595.) Since Goodrich did not sufficiently plead a cause of action for the deprivation of constitutional rights, her cause of action for a conspiracy to deprive her of her constitutional rights also fails.

DISPOSITION

The order is affirmed. The County to recover costs on appeal.

NOT TO BE PUBLISHED.

WOODS (Fred), J.

I concur:

LILLIE, P.J.

NOT TO BE PUBLISHED

JOHNSON, J.

I concur in the judgement. I write separately to emphasize a point raised by the majority. In this case, the court must determine whether the federal manufactured Home Construction and Safety Standards Act (the Act) creates a mandatory duty upon the state and its subdivisions to inspect mobile homes for defects complained of here. As the majority properly concludes, no such duty exists.

The difficulty in resolving this issue lies not so much with the legal analysis required, but with unravelling a complex statutory and regulatory scheme found both

in the federal and state systems. The difficulty is exascerbated in this instance because of the inadequate briefing by the parties. Although the issue presented is clear, the parties inexplicably fail to adequately join in the discussion.

A review of the federal act, and the regulations promulgated thereunder, fails to disclose any mandatory requirement that either federal or state inspectors examine a mobile home for installation defects. To the contrary, if a state voluntarily chooses to participate in the enforcement of the federal standards, it is only encouraged, but not required, to provide for the "monitoring of the installation of manufactured homes set up in the State to assure that the homes are properly installed and, where necessary, tied down." (24 C.F.R. § 3282.303.)

The Act itself is also bereft of mandatory language. The only apparent statute

which is relevant to the plaintiff's claim is 42 U.S.C. § 5413(a) which provides: "The Secretary is authorized to conduct such inspections and investigations as may be necessary to promulgate or enforce Federal manufactured home construction and safety standards established under this chapter or otherwise to carry out his duties under this chapter."

As was true of the federal regulation, the statute's language is only discretionary; it does not mandate inspections for compliance with the safety requirements. The absence of mandatory language in either the federal statutes or regulations eviscerates the plaintiff's claim of a mandatory duty. (Posey v. State of California (1986) 180 Cal.App.3d 836, 848.) Accordingly, the inescapable conclusion is no mandatory duty exists on the part of the state and the plaintiff's action based upon this theory must fail. I disagree, however,

with the majority's suggestion that if a mandatory duty was imposed by the Act, the county would nonetheless be immune from liability under Government Code sections 818.4 and 818.6. Unquestionably, these Government Code sections would ordinarily bar actions against a public entity for negligently inspected or approving defective property.(Govt. Code, §§ 818.4; 818.6.)

However, to the extent any duty to inspect or approve mobile homes is required by the Act, either directly or by the state's voluntary election to enforce the safety standards mandated by the Act, federal preemption in this area would supercede the State's immunity statutes. (42 U.S.C., §§ 5403(d); 5422(b); 24 C.F.R. § 3282.302.) To otherwise permit the immunity statutes to apply would impair "the Federal superintendence of the [mobile] home industry as established by the Act" by negating the mandatory nature of the standards im-

posed. (24 C.F.R. §3282.11(e); see Scurlock v. City of Lynn Haven, Fla. (11th Cir. 1988) 858 F.2d 1521, 1523-1524.) Accordingly, had the Act created a mandatory duty here, I would conclude federal preemption and the Supremacy Clause supercedes the state's immunity statutes.

NOT TO BE PUBLISHED

JOHNSON, J.

APPENDIX B

ORDER DENYING REVIEW

AFTER JUDGEMENT BY THE COURT OF APPEAL

Second Appellate District, Division Seven,

No. B034661

S012128

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
F I L E D

NOV 21 1989

Robert Wandruff Clerk
DEPUTY

ORDER DENYING REVIEW

AFTER JUDGEMENT BY THE COURT OF APPEAL

Second Appellate District, Division Seven,

No. B034661

S012128

IN THE SUPREME COURT OF THE STATE OF

CALIFORNIA

IN BANK

LOUISE W. GOODRICH, Appellant

v.

COUNTY OF LOS ANGELES, Respondent

Petition for review DENIED.

[stamped as follows]

SUPREME COURT
F I L E D

NOV 21 1989

Robert Wandruff Clerk
DEPUTY

LUCAS, C.J.

Chief Justice

Second Appellate District, Division Seven,

No. B034661

S012128

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

GOODRICH

v.

COUNTY OF LOS ANGELES

The time for granting or denying review in the above cause is hereby extended to and including December 19, 1989, or the date upon which review is either granted or denied.

[stamped as follows]

SUPREME COURT
F I L E D

NOV 14 1989

Robert Wandruff Clerk
DEPUTY

LUCAS, C.J.

Chief Justice

APPENDIX C

ORIGINAL FILED
MAR 31 1988
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LOUISE W. GOODRICH Plaintiff, v. REDMAN HOMES, INC. et al., Defendants.	CASE NO. C 566 070 ORDER OF DISMISSAL OF ACTION AS TO DEFENDANT, COUNTY OF LOS ANGELES,ONLY, AFTER COURT'S SUSTAINING OF DEMURRERS WITHOUT LEAVE TO AMEND

DE WITT W. CLINTON, County Counsel
PAUL T. HANSON, Principal Deputy County Counsel
500 West Temple Street
652 Hall of Administration
Los Angeles, California 90012
(213) 974-1841

[stamp]

Attorneys for Defendant
COUNTY OF LOS ANGELES

ORIGINAL FILED
MAR 31 1988
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LOUISE W. GOODRICH Plaintiff, v. REDMAN HOMES, INC. et al., Defendants.	CASE NO. C 566 070 ORDER OF DISMISSAL OF ACTION AS TO DEFENDANT, COUNTY OF LOS ANGELES,ONLY, AFTER COURT'S SUSTAINING OF DEMURRERS WITHOUT LEAVE TO AMEND

(Code Civ. Proc., § 581(f)(1); Law Dept. Policy Manual, § 224(b).)

The motion of defendant, County of Los Angeles ("County"), for dismissal of this entire action as to it, which was combined with County's general demurrer to the

Seventh and Eighth Causes of Action of the Fifth Amended Complaint of Plaintiff, Louise W. Goodrich ("Goodrich"), came on for noticed hearing before me at 9:00 a.m. on March 4, 1988, in Department V.N. "F."

De Witt W. Clinton, Los Angeles County Counsel, by Paul T. Hanson, Principal Deputy County Counsel, appeared as attorney for defendant and moving party, County.

Plaintiff, Louise W. Goodrich, was present and was represented by her attorneys of record, Fizzolio, Fizzolio and McLeod, by James M. Fizzolio.

Oral argument was heard and the County's general demurrers to the Seventh and Eighth Causes of Action of the Fifth Amended Complaint, the only causes of action of that complaint directed at or asserted against the County, were granted without leave to amend and this motion for dismissal was granted.

It appears from the records,

declarations, pleadings and the file herein that:

1. County's general demurrer to the Fifth Amended Complaint, specifically to the Seventh and Eighth Causes of Action of the Fifth Amended Complaint, the only causes of action that complaint directed at or asserted against County, was sustained without leave to amend by me on March 4, 1988.

2. Previously, this Court, Judge Robert L. Roberson, Jr., on October 24, 1986, sustained without leave to amend, County's noticed general demurrer to the Seventh Cause of Action of the Second Amended Complaint.

3. The latest complaint in this case is the Fifth Amended Complaint. There are no causes of action in the Fifth Amended Complaint, other than the Seventh and Eighth Causes of Action, which are directed at or asserted against the County.

4. Code of Civil Procedure, § 597. is not applicable to the sustaining of these general demurrers without leave to amend on October 24, 1986, and March 4, 1988. (See Code Civ. Proc., § 581(f)(1), 597.)

Good cause appearing therefore, County's motion for dismissal is granted and this action is hereby dismissed as to defendant, County of Los Angeles, only.

Dated: 3/31/88 (signature of Judge)
Howard J. Schwab, Judge,
Los Angeles Superior Court

DECLARATION OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

AMPARO S. MARILAO states I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action; that my business address is 648 Hall of Administration, City of Los Angeles, County of Los Angeles, State of California.

That on the 26th day of April, 1988, I served the attached NOTICE OF DISMISSAL upon all interested parties by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box in Los Angeles, California, Addressed as follows:

JAMES M. FIZZOLIO
Fizzolio, Fizzolio and McLeod
Los Angeles Federal Savings Bldg.
15260 Ventura Blvd., Suite 540
Sherman Oaks, CA 91403-5307

Attorney for Plaintiff,
LOUISE GOODRICH

I. DONALD WEISSMAN
Staitman & snyder
15760 Ventura Blvd., #1901
Encino, CA 91436-3062

Attorneys for Defendant
BRATTON ENTERPRISES, INC.

PAUL J. COONY, ESQ.
Law Offices of Paul J. Cooney
18411 South Crenshaw Blvd Suite 220
Torrance CA 90504

Attorney for Defendant and Cross-Defendant
CARLOS PADILLA

JOHN SCHROEDER, ESQ.,
Robert Parker Mills
911 East Colorado Blvd. Third Floor
Pasadena, CA 91106

Attorney for cross-Defendant
and Cross-Complainant
TED RUDOLPH

ROBERT L. RINEHART, ESQ.
Law Offices of Robert L. Rinehart
1809 Lampton Lane
Norco, CA 91760

Attorneys for Defendant
HALART ESCROW CO.

W. DENNIS SNYDERMAN
Law Offices of Max Fink
9777 Wilshire Blvd. Suite 700
Beverly Hills, CA 90212

Attorney for Defendant and
Cross-Defendant,
REDMAN HOMES, INC.

and that the person on whom said service was made has his office at a place where there is a delivery service by United States mail, and that there is a regular commuication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of April, 1988, at Los Angeles, California.

_____(signature)_____
Amparo S. Marilao

APPENDIX D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 83

DATE: October 24, 1986

HONORABLE Robert L. Roberson JUDGE

C 566 070

Louise W. Goodrich
vs
Redman Homes Inc.,
etc et al

NATURE OF PROCEEDINGS

DISPOSITION OF DEMURRER MOTIONS

X Notice: X: By respective moving parties

MINUTES ENTERED
October 24, 1986
COUNTY CLERK

12 DEPT 83

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES DEPT. 83

DATE: October 24, 1986

HONORABLE Robert L. Roberson JUDGE
HONORABLE JUDGE PRO TEM
12 Deputy Sheriff

P. Hurd DEPUTY CLERK _____

G. Donester Reporter

(Parties and counsel checked if present)

C 566 070

Louise W. Goodrich
vs
Redman Homes Inc.,
etc et al

Counsel for Plaintiff
J. FIZZOLIO x

Counsel for Defendant
STAITMAN &
B. SNYDER x

P. HANSON x

M. McCLURE x

NATURE OF PROCEEDINGS

A. Demurrer of defendant Bratton Enterprises Inc to second amended complaint
o
Motion ot above defendant to strike certain portions of plaintiff's second amended complaint
í

(First cont.)

A. Demurrer 1,4th cause of action-Overruled 5th cause of action -Overruled.Not supported by Points and Authorities-see LDPM 105(a). 2.8th cause of action is sustained,45

	days to amend. B. Motion is denied. (alleges act of deliberate concealment and forgery sufficient for a motion to strike).
Demurrer of defendant County of Los Angeles to plaintiff, Goodrich's second amended complaint	C. 7th cause of action-Sustained without leave to amend. 8th cause of action-Sustained, 45 days to amend. (Not factually supported)

[form boxes here, unchecked]

X Notice: X: By respective moving parties

MINUTES ENTERED
October 24, 1986
COUNTY CLERK

12 DEPT 83

B-225
76M213E(Rev. 6-84)6-84

APPENDIX E

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LOUISE W. GOODRICH Plaintiff, v. REDMAN HOMES, INC. et al., Defendants.	CASE NO. C 566 070 NOTICE OF RULING ON DEMURRER

[Dated 10-29-86]

DE WITT W. CLINTON, County Counsel
PAUL T. HANSON, Principal Deputy County Counsel
500 West Temple Street
652 Hall of Administration
Los Angeles, California 90012
(213) 974-1841

Attorneys for Defendant
COUNTY OF LOS ANGELES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LOUISE W. GOODRICH Plaintiff, v. REDMAN HOMES, INC. et al., Defendants.	CASE NO. C 566 070 NOTICE OF RULING ON DEMURRER

To all parties and their attorneys of record:

On October 24, 1986, at 9:a.m., counsel of record for Plaintiff, County, Bratton, and Conrad's Mobile Home appearing, Judge Robert L. Roberson, ruled as follows on the previously noticed demurrer of County of Los Angeles to the

Seventh and Eighth Causes of Action of the Second Amended Complaint, served by mail on July 16, 1986, the Seventh and Eighth Causes of Action being the only ones therein directed at County of Los Angeles:

As to the Seventh Cause of Action, County's general demurrer was sustained without leave to amend for failure of this cause of action of the Second Amended Complaint to state facts constituting a cause of action against County, for the reasons stated in County's points and authorities served and filed as part of the demurrer on September 16, 1986, from page 2, line 15, to page 10, line 13.

As to the Eighth Cause of Action, County's general demurrer was sustained for failure to state facts constituting a cause of action against County, with leave to amend within 45 days from the hearing date, October 24, 1986, for failure to plead factually and for improper conclusionary

pleading and for the reasons stated in County's Points and Authorities with the demurrer filed and served on September 16, 1986, at page 8, lines 12 to 18, and page 10, line 14, to page 12, line 22.

Date: 10-29-86

DE WITT W. CLINTON
County Counsel

By (Signature)
PAUL T. HANSON
Principal Deputy County Counsel

Attorneys of Record for Defendant
COUNTY OF LOS ANGELES

1/NOT-24
10-28-86

DECLARATION OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

GWEN C. BLAND states I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party in the within action; that my business address is 648 Hall of Administration, City of Los Angeles, County of Los Angeles, State of California.

That on the 30th day of October, 1986, I served the attached NOTICE OF RULING ON DEMURRER upon all interested parties by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box in Los Angeles, California, addressed as follows:

JAMES M. FIZZOLIO
Fizzolio, Fizzolio and McLeod
Los Angeles Federal Savings Bldg.
15260 Ventura Blvd., Suite 540
Sherman Oaks, CA 91403-5307

Attorney for Plaintiff,
LOUISE GOODRICH

I. DONALD WEISSMAN
Staitman & Snyder
15760 Ventura Blvd., #1901
Encino, CA 91436-3062

Attorneys for Defendant
BRATTON ENTERPRISES, INC.

ROBERT L. RINEHART, ESQ.
Law Offices of Robert L. Rinehart
1011 Victoria Avenue
P.O. Box 1735
Corona, CA 91718-1735

PAUL J. COONY, ESQ.
Law Offices of Paul J. Cooney
18411 South Crenshaw Blvd Suite 220
Torrance CA 90504

Attorney for Defendant and Cross-Defendant
CARLOS PADILLA

JOHN SCHROEDER, ESQ.,
Robert Parker Mills
911 East Colorado Blvd. Third Floor
Pasadena, CA 91106

Attorney for cross-Defendant and Cross-Complainant
TED RUDOLPH

W. DENNIS SNYDERMAN
Law Offices of Max Fink
9777 Wilshire Blvd. Suite 700
Beverly Hills, CA 90212

Attorney for Defendant and Cross-Defendant,
REDMAN HOMES, INC.

and that the person on whom said service

was made has his office at a place where there is a delivery service by United States mail, and that there is a regular commuication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of October 1986, at Los Angeles, California.

GWEM C. BLAND

1/NOT-26
10-28-81